

Minnesota Housing Finance Agency

ASSIGNMENT OF ARCHITECT'S CONTRACT

This Assignment is effective as of the ____ day of _____, 20____, between _____, a _____ ("Borrower"), and the Minnesota Housing Finance Agency, a public body corporate and politic of the State of Minnesota ("MHFA").

RECITALS

(TO BE USED WITH NOTE AND MORTGAGE)

A. Borrower and MHFA have entered into a Minnesota Housing Finance Agency Building Loan Agreement, of even date herewith (the "Building Loan Agreement"), under which MHFA has agreed to make advances to Borrower not exceeding the principal amount of \$_____ (the "Loan") in accordance with the terms thereof to finance construction of certain improvements on real estate located in _____ County, Minnesota (the "Project"). The Loan will be evidenced by a Minnesota Housing Finance Agency _____ Program Mortgage Note and a Minnesota Housing Finance Agency _____, [if adding multiple program Notes, then change the word "both" to "all"] both of even date herewith, payable to the order of MHFA in the total original principal amount of \$_____ (collectively, the "Note").

B. To secure payment of the Note, Borrower has executed and delivered to MHFA a Minnesota Housing Finance Agency _____ Program Assignment of Rents and Leases and a Minnesota Housing Finance Agency _____ Program Assignment of Rents and Leases, [if adding multiple program Assignment of Rents and Leases, then change the word "both" to "all"], both of even date herewith, covering the rents and leases affecting the Project, and a Minnesota Housing Finance Agency _____ Program Combination Mortgage, Security Agreement, and Fixture Financing Statement and a Minnesota Housing Finance Agency _____, [if adding multiple program Mortgages, then change the word "both" to "all"], both of even date herewith, covering certain property, which, among other things, includes the real estate upon which the Project is to be constructed (the "Real Estate") and the buildings, improvements, fixtures and personal property now or hereafter located thereon.

(USE PARAG. B, BELOW FOR HTF 501C 3)

B. To secure payment of the Note, Borrower has executed and delivered to MHFA a Minnesota Housing Finance Agency Housing Trust Fund Program Combination Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Financing Statement, of even date herewith, covering the rents and leases affecting the Project and covering certain property, which, among other things, includes the real estate upon which the Project is to be constructed (the "Real Estate") and the buildings, improvements, fixtures and personal property now or hereafter located thereon.

(TO BE USED WITH REPAYMENT AGREEMENT)

A. Borrower and MHFA have entered into a Minnesota Housing Finance Agency Building Loan Agreement, of even date herewith (the "Building Loan Agreement"), under which MHFA has agreed to make advances to Borrower not exceeding the principal amount of \$_____ (the "Loan") in

accordance with the terms thereof to finance the construction of certain improvements on real estate located in _____ County, Minnesota (the "Project"). The Loan will be evidenced by a Minnesota Housing Finance Agency _____ Loan Repayment Agreement and Mortgage, of even date herewith, between Borrower and MHFA (the "Repayment Agreement")

B. To secure payment of the Loan, Borrower has executed and delivered to MHFA, in the Repayment Agreement, a mortgage covering certain property, which, among other things, includes the real estate upon which the Project is to be constructed (the "Real Estate") and the buildings, improvements, fixtures and personal property now or hereafter located thereon.

C. MHFA has required, as a condition to making any Advances under the Building Loan Agreement, the execution hereof by Borrower and the acknowledgment hereof and consent hereto by the Architect referred to below.

ACCORDINGLY, in consideration of the foregoing, Borrower grants, assigns, transfers and sets over unto MHFA all of its right, title and interest in and to (i) the plans, drawings and specifications, and all amendments, modifications, supplements, general conditions and addenda thereto, as set forth in **Exhibit A** attached hereto (the "Plans") prepared by or under the supervision or direction of _____ (the "Architect"), together with any other Contract Documents, as defined in AIA Document A101, for the account of Borrower in connection with the construction of the Project and development of the Real Estate, and (ii) that certain architectural contract (the "Contract") dated _____, between Borrower and the Architect for preparation of the Plans and supervision of construction of the Project, a true and correct copy of which has been delivered to MHFA this date.

1. Borrower agrees that MHFA does not assume any of the obligations or duties of Borrower under or with respect to the Contract unless and until MHFA shall have given the Architect written notice that it has affirmatively exercised its right to complete or cause the completion of construction of the Project following the occurrence of an Event of Default under the Building Loan Agreement. If MHFA does not personally undertake to complete construction, MHFA shall have no liability whatsoever for the performance of any of such obligations and duties. For the purpose of completing the Project, MHFA may, in its absolute discretion, reassign its right, title and interest in the Contract and the Plans upon notice to the Architect but without any requirement for Borrower's consent.

2. Borrower represents and warrants that there have been no prior assignments of the Plans or the Contract, [except as set forth in that certain Master Subordination Agreement and Estoppel Certificate (the "MSA") dated of even date herewith,] that the Contract is a valid, enforceable agreement, that neither party is in default thereunder, and that all covenants, conditions and agreements have been performed as required therein except those not due to be performed until after the date hereof. Borrower agrees that no change in the terms thereof shall be valid without the written approval of MHFA. Borrower agrees not to assign, sell, pledge, mortgage or otherwise transfer or encumber its interest in the Plans or the Contract so long as this Assignment is in effect.

3. Borrower hereby irrevocably constitutes and appoints MHFA as its attorney-in-fact to demand, receive, and enforce Borrower's rights with respect to the Plans and the Contract, to make payments under the Contract and give appropriate receipts, releases and satisfactions for and on behalf of and in the name of Borrower or, at the option of MHFA in the name of MHFA, with the same force and effect as Borrower could do if this Assignment had not been made.

4. This Assignment shall constitute a perfected, absolute and present assignment, provided

that MHFA shall have no right under this Assignment to use the Plans or enforce the provisions of the Contract until an Event of Default shall occur under the Building Loan Agreement or Borrower shall be in default under the [Note/Repayment Agreement] or under any other instrument, document or agreement related to the Project. Upon the occurrence of any such default or Event of Default, MHFA may, without affecting any of its rights or remedies against Borrower under any other instrument, document or agreement, exercise its rights under this Assignment as Borrower's attorney-in-fact in any manner permitted by law. In addition, MHFA shall have the right to exercise and enforce any or all rights and remedies available after default to a secured party under the Uniform Commercial Code, as adopted in the State of Minnesota. If notice to Borrower of any intended disposition of the collateral or any other intended action is required by law in a particular instance, such notice shall be deemed commercially reasonable if given at least 10 days prior to the date of intended disposition or other action.

5. Borrower agrees to pay all costs and expenses (including, without limitation, reasonable attorney's fees) that MHFA may incur in exercising any of its rights under this Assignment.

6. Subject to the aforesaid limitation on further assignment by Borrower, this Assignment shall be binding upon Borrower, its heirs, representatives, assigns and successors, and shall inure to the benefit of MHFA, its successors and assigns.

7. This Assignment can be waived, modified, amended, terminated or discharged only explicitly in a writing signed by MHFA. A waiver signed by MHFA shall be effective only in a specific instance and for the specific purpose given. Mere delay or failure to act shall not preclude the exercise or enforcement of any of MHFA's rights or remedies hereunder. All rights and remedies of MHFA shall be cumulative and may be exercised singularly or concurrently, at MHFA's option, and the exercise or enforcement of any one such right or remedy shall neither be a condition to nor bar the exercise of enforcement of any other.

IN WITNESS WHEREOF, Borrower has executed this Assignment as of the day and year first above written.

a _____

By: _____
a _____
General Partner

By: _____

Its: _____

ARCHITECT'S ACKNOWLEDGMENT AND CONSENT

In consideration of MHFA's making the construction loan to Borrower described in the foregoing Assignment, the undersigned Architect hereby consents to the above Assignment and acknowledges and agrees with MHFA as follows:

1. The Architect has prepared the Plans and entered into the Contract with Borrower, a true and correct copy of which has been delivered to MHFA.

2. The Plans have not been assigned and the Contract is in full force and effect, has not been modified or assigned, [except as set forth in the MSA]] and no event has occurred or failed to occur as of the date hereof which, but for the passage of time, the giving of notice or both, would be a default thereunder.

3. Upon the occurrence of an Event of Default under the Building Loan Agreement, (i) MHFA shall have the right to use the Plans and other Contract Documents and the ideas, designs, and concepts therein contained in connection with the completion of the Project without payment of any additional fees or charges to the Architect, and (ii) the Architect shall, at MHFA's request, continue performance on MHFA's behalf under the Contract in accordance with the terms thereof, provided that the Architect has received or continues to receive compensation in accordance with the Contract.

4. MHFA may enforce the obligations of the Contract with the same force and effect as if enforced by Borrower and may perform the obligations of Borrower, and the Architect will accept such performance in lieu of performance by Borrower in satisfaction of Borrower's obligations thereunder.

5. The Architect will give MHFA prompt written notice of any default by Borrower under the Contract.

6. The Architect will not terminate the Contract on account of any default of Borrower thereunder without written notice of such default to MHFA and providing MHFA 30 days to cure the default or to use the Plans and assume Borrower's obligations under the Contract. In the event that MHFA so elects, the Architect agrees not to terminate the Contract so long as the defaults of Borrower thereunder are cured by MHFA within a reasonable time. However, nothing herein shall require MHFA to cure any default of Borrower under the Contract.

7. The officer signing this consent on behalf of the Architect hereby certifies that, to the best of his knowledge, the Plans are in compliance with all protective covenants, conditions and restrictions affecting the Real Estate or the Project and with all requirements and restrictions of all governmental authorities having jurisdiction over the Real Estate, including, without limitation, all applicable building, fire and health legislation, ordinances, rules and regulations. Upon completion of the Project, the Architect will certify to MHFA, and to any assignee of the loan made by MHFA under the Building Loan Agreement, that the Project has been substantially completed in accordance with the Plans and with all such rules and regulations.

Dated as of _____.

a _____

By: _____

Its: _____

EXHIBIT A

PLANS